



Guideline Leaflet L18: Covid-19 Coronavirus Legal Issues

Churches are facing a very challenging time because of the lockdown imposed by the Government due to the coronavirus pandemic. This guidance aims to gather in one place the various legal and regulatory issues that have arisen because of the lockdown.

This Guideline Leaflet is regularly reviewed and updated. To ensure that you are using the most up to date version, please download the leaflet from the BUGB website at www.baptist.org.uk/resources

The date on which the leaflet was last updated can be found on the download page.

L18: Covid-19 Coronavirus Legal Issues

These notes are offered as guidelines by the Legal and Operations Team to provide information for Baptist churches.

The legal services undertaken by the Legal & Operations Team of the Baptist Union of Great Britain are carried out and/or supervised by a Solicitor who is authorised and regulated by the Solicitors Regulation Authority. Regulatory Information is available here:

[L17 Legal and Operations Team – Regulatory Information](#)

These notes can never be a substitute for detailed professional advice if there are serious and specific problems, but we hope you will find them helpful.

If you want to ask questions about the leaflets and one of the Baptist Trust Companies are your property trustees, you should contact them. They will do their best to help.

If your church property is in the name of private individuals who act as trustees they may also be able to help.

INTRODUCTION

Churches have been facing a challenging time because of the restrictions imposed by the Government due to the coronavirus pandemic. This guidance aims to gather in one place the various legal and regulatory issues that have arisen. While churches long to gather together again it is important to remember your duty to protect the physical and mental wellbeing of your church and local community and your wider safeguarding obligations. The Baptist Union urges all churches to comply with the Government guidelines.

Church Governance and Constitutions

The Charity Commission is the regulator for all Baptist churches, whether or not they are registered as charities. Churches will naturally be concerned about the difficulty that they may have in complying with all the terms of their constitution at the present time but the Commission issued reassurance in this respect at the beginning of the first lockdown. They said: *We want to assure charities that our approach to regulation during this uncertain period will be as flexible and pragmatic as possible in the public interest, whilst helping trustees to be aware of and think about the wider or longer impact of their decisions on their charity.*

Charity trustees are required to take decisions that are in the best interests of their charity; where this results in a procedural irregularity or a technical breach of their constitution, they should carefully minute the reason for their decision.

Church Members' Meetings

At the beginning of 2021, as Covid-19 cases rose significantly and we entered national lockdown, we recommended to our churches not to open their buildings for in-person meetings. In the light of the Welsh Government announcement on Friday 19 February and the UK Government announcement on Monday 22 February, which started the process of easing lockdown, we have concluded that it is now appropriate to withdraw this recommendation.

We encourage churches to consider their own plans for re-opening and take the decisions that are appropriate for their own local circumstances. We recognise this is a decision for the local church, and the value of churches meeting together will mean that you may choose to re-open for in-person worship, including church members' meetings.

Our Baptist identity focuses on congregational church governance and the importance of gathering together in person to prayerfully discern the mind of Christ for the church. Our model constitutions were not written for times such as these and neither the BUGB Approved Governing Document (AGD) for unincorporated churches nor the BUGB AGD for CIOs (Charitable Incorporated Organisations) currently provide for electronic church member meetings. Churches have the following options:

1. Government guidance still suggests that where meetings or small gatherings can take place digitally without the need for face-to-face contact, they should continue to do so. Since our Approved Governing Documents do not provide for virtual meetings then in continuing to meet online, using Zoom for example, a church will be in technical breach of its constitution. The Charity Commission has said that it will adopt a flexible and pragmatic approach to charities who are meeting this way during this period and churches can continue to rely on this.

As ever, while taking decisions charity trustees need to be confident that they have the support of the wider membership. On important issues that would require a decision of the church members, it is wise at this current time for trustees to do what they can to ask for members' views; by email, telephone, post or video conference, whatever works best for your church. If video conferencing is possible then it does offer the opportunity for members to listen, discuss and pray together, which are advantages. Zoom also offers an anonymous polling facility. Not all church members will be able to use video conferencing, and it is important to provide an alternative means to allow all church members to feed any comments or concerns they may have into the decision-making process.

It is important to note that important decisions taken now in an irregular way should be ratified at a later date in the gathered church meeting. Decisions taken other than in accordance with your constitution are open to challenge.

A number of churches have contacted us to ask whether they can amend their constitution to provide for virtual church members' meetings. Baptist Union Council considered the ecclesiological implications for our Baptist identity and were supportive of this approach. We have issued further information about this and provided new template clauses for unincorporated associations in our November 2020 update which can be found [here](#). Template clauses for CIOs were made available in the December 2020 update which is available on the same weblink.

2. Communal worship, including prayers, devotions or meditations led by a Minister of Religion or lay person are permitted in a place of worship by law and the advised gathering limit is based upon the capacity of the place of worship following a risk assessment and adherence to social distancing rules. A church members' meeting includes communal worship and prayer, and the emphasis of the meeting is the prayerful discernment of the gathered community. We would argue therefore that a church meeting is permissible in a place of worship. Churches should refer to the Baptists Together guidance on reopening places of worship which you can find [here](#)

There will, of course, be some members who do not feel that it is safe or wise to attend a physical meeting and so may choose to stay away but feel that they are missing out. The emphasis of our meetings has always been on the importance of people gathering together and some do always miss out e.g., the parent at home. Our meetings do not aim for democracy but discernment of the gathered community although we recognise that this has pastoral implications too.

Where a church is able to hold a gathered meeting with enough church members to meet the quorum requirements in their constitution then they can take legally valid decisions.

3. A hybrid meeting involving members who are present at the church members' meeting and those joining online is difficult since only those members present physically will be able to vote on decisions and count towards the quorum. However, churches may decide that this is still a safer and better option for them at present.

The charity trustees will need to determine which option to follow based on their local church circumstances i.e. the nature of the decisions they need to make, their church members, the capacity in their church to hold a church members' meeting whilst socially distancing, and the quorum required to pass resolutions.

Further guidance on keeping your church community connected can be found on the Baptists Together website [here](#). This includes training on using Zoom.

Anthony Collins LLP have produced a guide to video conferencing safely which you can find [here](#)

Annual General Meetings (AGMs)

Many churches were due to hold their AGM at this time. The Charity Commission has said:

Coronavirus continues to have a major impact on charity events and trustees need to consider how and if they can hold meetings.

We recognise that for some charities virtual meetings are not a viable solution, nor are socially distanced face-to-face meetings. In such instances trustees may consider they have no choice but to cancel or postpone their AGMs and other critical meetings.

If you do consider such a decision is necessary, you should follow any rules in your charity's governing document that allow for postponement, adjournment or cancellation. If there are no such rules, but you decide that this is still the best course of action for your charity in the current circumstances, you should record the reasons for this decision to demonstrate good governance of your charity. This is particularly important if it is not possible to hold your AGM which may make it difficult for you to finalise your annual reports and accounts.

For registered charities they go on to say:

Wherever possible, we would ask you to get your annual reports to us on time. However, where the situation impacts on the completion of annual returns and accounts, charities with an imminent filing date can email us.

Please include your charity name and charity registration number when you email us: filingextension@charitycommission.gov.uk

Appointing Charity Trustees

We have had a number of queries about appointing new charity trustees during the pandemic restrictions. Some churches have asked whether they can extend the terms of service of existing trustees beyond their defined end date without holding an election. We would caution against this since the pandemic does not prevent elections from taking place and churches should still comply with the terms of their constitution whenever possible. Instead, we would recommend that the charity trustees decide how an election and nomination process can best take place when meeting in person is not possible.

Some churches have postal voting provisions for trustee appointments within their constitution but even where this is not the case churches can decide to allow members to vote for appointments by post. Alternative methods such as using email or other online voting platforms are equally acceptable, whatever works best for your church during this period. The Charity Commission would be concerned to see that the process is still 'robust' but we would hope that in our churches the likelihood of people trying to cheat the system is very low!

Charity trustees are required to take decisions that are in the best interests of their charity; where this results in a procedural irregularity or a technical breach of their constitution, they should carefully minute the reason for their decision.

Charity Trustee Meetings

Churches that have the BUGB Approved Governing Document as their constitution will not have a legal power for the trustees to meet electronically. As with church member meetings, the trustees need to take a pragmatic approach to making decisions if they are unable to meet in person. Again, it is important to carefully minute the reasons for your decisions. If all the trustees agree any lawful course of action, it will be a valid decision, whatever the governing document says. If a trustee meeting is not held by video conferencing or conference call with minutes taken, decisions may also be made collectively by asking everyone to agree to a decision in writing (including by email).

We have worked with our solicitors to provide amended clauses, within the BUGB Approved Governing Document, which churches can choose to adopt in order to make provision for virtual charity trustee meetings. The new template clauses can be found in our November 2020 update which is available [here](#).

Churches that have incorporated as CIOs have additional methods for taking charity trustee decisions and should refer to the clauses in their CIO constitution on 'Participation in meetings by electronic means' (22.9 in the BUGB CIO AGD) and 'Taking of decisions by Charity Trustees' (clause 20 in the BUGB CIO AGD). 'Electronic' refers to both video and telephone meetings.

If trustees are unable to meet remotely using electronic means and must meet at this time, then they may decide to hold an in-person meeting, but it must be held safely following social distancing guidelines. It is for the charity trustees to decide the most appropriate course of action and they should consider carefully whether it is necessary to hold the meeting in person. If it is in the best interests of the church charity to hold the meeting, so that the church can continue to operate and provide "charitable services", then it will be reasonable to hold the meeting in church. Trustees should also consider the reputation of the church and whether in holding such a meeting in person, it could cause people to question whether it was wise or necessary.

Information for CIOs and Companies: temporary statutory provisions

The Corporate Insolvency and Governance Act 2020 (CIGA 2020) only applies to Churches that have incorporated as CIOs (charitable incorporated organisations) or companies. The Act relaxes governance requirements and helps incorporated churches to hold legally valid meetings during lockdown. The measures apply retrospectively and came into force at the end of June 2020. They came to an end on 30 March 2021.

The Act creates a more flexible framework in which meetings can be held, notwithstanding the organisation's constitutional requirements. These measures allow meetings to be validly held while the current restrictions on public gatherings remain in place and in the context of the potential for social distancing measures to continue into the future.

Initially the Act temporarily allowed corporate organisations to hold an AGM or other members' meetings virtually, during the six months from 26 March to 30 September, even where their governing documents do not permit this. The 30 September deadline was later extended to 30 March 2021.

The Act provides that meetings do not need to be held in a particular place and may be held and have votes cast by phone, video or other electronic means, including postal voting. The meeting may be held without any number of those participating having to be together in the same place, so a quorum can be formed with an entirely virtual meeting.

The Charity Commission says that if charities rely on these provisions, they 'must ensure that this decision is recorded in the minutes and that all other meeting requirements are met. You should ensure

that you have a robust system to ensure only those eligible to vote can do so and that you record who has voted and the percentages of votes cast’.

These measures apply retrospectively, which means that church CIOs that held a virtual AGM or other church members’ meeting after 26 March 2020 can have these meetings validated even where they were not held in line with their governing document.

The Act initially allowed AGMs to be postponed but these provisions came to an end on 30 September 2020. This means that, from 1 October 2020, CIOs and companies were no longer able to take advantage of the provisions of CIGA 2020 permitting them to delay their AGM.

The provisions in this Act do not apply to the vast majority of Baptist churches who are still unincorporated associations. These churches should continue to rely on the advice on pages 2 and 3 of this leaflet.

Serious Incident Reporting

The Charity Commission has published detailed guidance to help charities decide whether they need to report a serious incident in the context of the pandemic. This can be found [here](#) and includes a table of examples to illustrate whether a report needs to be made. In particular churches should note that if a church has had to close their premises due to the lockdown, or has had to temporarily stop operating, or has experienced a substantial drop in income, then none of these are reportable unless as a result the church is:

- unable to deliver vital services to at risk beneficiaries; and/or
- insolvent and/or forced to close permanently;

or

- highly likely to be insolvent and/or forced to close permanently within the next 12 months.

The Charity Commission’s general guidance on serious incident reporting continues to apply and more information can be found in leaflet [C17 Serious Incident Reporting](#).

Copyright Licences and Streaming

A standard Church Copyright Licence does not include a licence for copyrighted content to be used in streaming or webcasting church services. CCLI (Christian Copyright Licensing International) now provide streaming licences which churches can purchase [from this page](#). They say:

The CCLI® Streaming Licences provide a solution for churches wishing to stream or webcast their services, including the live worship, via platforms that are otherwise only intended for personal use. Upgrade to the Streaming Plus Licence to add authorisation to stream Master recordings and Multi Tracks. Both licences include the right to show lyrics as part of the stream, to enable viewers to sing along. If you are hosting the stream on your own church website you will also require a Limited Online Music Licence (LOML) directly from PRS for Music. The CCLI Streaming and Streaming Plus Licences are available to CCLI Church Copyright Licence holders.

Please note that the CCLI licences will only cover the church for use of recordings from a publisher/song owner that CCLI represents. If you find that CCLI does not cover the recording you wish to use it may be covered by a licence from a different provider.

Streaming of Services

Many of our churches have been live streaming services throughout lockdown and are continuing to do so until they can safely reopen. The government guidance encourages churches to continue to do this

to reduce the size of physical gatherings and continue to reach those who are self-isolating or otherwise unable or unwilling to attend.

There are data protection issues involved in filming services. A church should seek consent from any individuals appearing on screen (where they can be identified) for their involvement and the processing of their personal data through video footage or podcasts. Records of these consents should be kept. This should be relatively straightforward where a service has been created solely for broadcast due to the limited numbers of people involved and the fact that those involved should be clear on the purpose for which they are contributing to the service.

However, where a church is planning to hold a service in the church with a congregation and broadcast the same the service to a wider audience (either live or later) then this will involve processing images of the persons attending the service who might be filmed and identifiable. It will likely be challenging to obtain consent from all of these individuals for their personal data to be used in this way. The church may need to rely on legitimate interest as the lawful basis for the filming and live streaming. If so, we suggest that information about the filming should be provided to members and attendees in advance, which will enable those attending to decide to opt out if they wish or to sit in a designated area in the church where they will not be filmed. Notices should be placed in a prominent place at the entrances, as well as in the newsletter/notice sheet to explain that the service will be filmed. A reminder can also be given from the front at the start of the service. Particular care should be taken in relation to children or adults at risk, unless prior consent from them or their parents/guardians has been obtained.

In addition to data protection issues, there are also considerable technical and practical issues in trying to produce a service that works well both for those attending live and those joining online. You may wish to consider doing a live service for those attending in person and a separate service for broadcast.

Data Protection

Over the past year we have all been adjusting to new ways of working. This means, for many of us, that we have been working from home. Your church's data protection policy will still apply to you, your church staff and volunteers, if they are doing church work from home and processing or dealing with individuals' personal data.

It is important to give consideration to the security of the data you are processing:

- Is paper-based information held in secure lockable cupboards?
- Are electronic devices where church-related personal information is held password or PIN protected? Family members should not be able to log on to the same account where church data is stored.
- Are documents containing sensitive personal information encrypted?
- Where reasonably possible, documents should be edited and saved onto church systems e.g. using online Microsoft office tools, rather than saving documents to a personal device.
- Where you cannot carry out an activity without saving a document onto a personal device, you should create a specific folder for all church-related documents and clear the folder out on a regular basis (including emptying your "recycling bin" in Windows (or equivalent) to minimise the footprint of church documents on your device).

The Data Protection Guideline Leaflet L13 has more detailed guidance for churches (see www.baptist.org.uk/resources/L13.) The ICO also has a designated Coronavirus information hub on its website which can be read [here](#) and the helpline for telephone queries is 0303 123 1113.

Property Issues

England and Wales each have their own separate rules for dealing with the pandemic. Guidance as to what people can and cannot do in England can be found here: <https://www.gov.uk/guidance/covid-19-coronavirus-restrictions-what-you-can-and-cannot-do> . For Wales, the relevant guidance can be found here: <https://gov.wales/alert-level-3> .

(It may be possible that, in future, some areas could become subject to local restrictions over and above any general national restrictions. If this happens, churches in an area affected should always adhere to all prevailing rules governing them according to where they are situated in addition to the national rules. We would expect the websites of the relevant Government and Local Authority to contain further information should this become relevant in due course. The guidance in this leaflet is always subject to any locally applicable rules that are in place and such rules will always take precedence over what we say here which represents the general national position).

Risk Assessments

It is essential that churches conduct a risk assessment taking into account the risks of COVID-19 before undertaking any activity. We have published a separate leaflet on re-opening church premises which includes details about the relevant requirements and a risk assessment template. Links to the leaflet and the risk assessment can be found here:

https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx

Legal requirement for churches in Wales

It is now a separate and specific legal requirement for churches in Wales to undertake an assessment of the risk of exposure to coronavirus at places of worship and church halls. As part of this, the church must consult persons working on the premises (or representatives of those persons). The risk assessment must be carried out prior to allowing the premises to be used.

The requirement to undertake a risk assessment is in addition to normal measures the churches is already required to take, for example to keep people 2 metres apart, to control the use of entrances passageways and shared facilities (such as toilets and kitchens) and informing those entering the premises how to minimize their risk of exposure to the coronavirus. The regulations state a list of possible measures which include: not carrying out certain activities, closing part of the premises, allowing people to self-isolate in accordance with the official guidance and collecting contact information for the purpose of contact tracing.

The required risk assessment must satisfy the requirements of the Management of Health and Safety at Work Regulations 1999 and must be undertaken whether or not a previous health and safety at work risk assessment has been carried out. The requirement to undertake a risk assessment would still apply even if the premises were only used occasionally, for example for weddings and/or funerals or if the premises are just being attended by employees or volunteers.

The risk assessment would need to be reviewed every time there was a significant change in the matters to which it relates or there was reason to suspect that it was no longer valid. The risk assessment is required to be in writing where the church has five or more employees/volunteers but it is recommended that, in all circumstances, the risk assessment be in writing to demonstrate compliance with the legal obligation.

Churches are referred to our leaflet on reopening church premises and the risk assessment which can be found there. It can be found here: <https://www.baptist.org.uk/Publisher/File.aspx?ID=266796>

Unoccupied Properties

Churches are advised to refer to [this](#) guidance from Baptist Insurance on 'Temporarily closed or unoccupied churches and church properties during COVID-19' or to contact their own insurers if they are in any doubt as to how to safeguard their unused property assets. A link to an empty property checklist can be found here:

https://www.baptist.org.uk/Articles/572733/Empty_buildings_checklist.aspx.

Recording Who Enters Property

It would be a good idea to keep a record of everyone entering church property. This will help reduce the risk of infection, for example, by letting a person accessing the premises know that no-one else is there. In addition, if a person recorded to have had recent access to the church contracts COVID-19, prompt and appropriate measures can be taken. For data protection purposes there is a template privacy policy at Appendix 4 of our leaflet on Reopening Church Buildings (please see the link above).

General Property Considerations

Inspections, Repairs and Maintenance

In England, the general position is that people may still work where it is not reasonably possible for them to do so from home. There is Government guidance for people undertaking work outside and in other settings, please see: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19> . Churches should form their own view as to whether arranging such work would be the right thing to do taking into account all relevant factors.

In Wales, the position is similar but the relevant guidance can be found at <https://gov.wales/taking-all-reasonable-measures-minimise-risk-exposure-coronavirus-workplaces-and-premises-open>

Use of Church Premises

Churches should read our separate leaflet on reopening church buildings which can be found here: https://www.baptist.org.uk/Articles/582203/Coronavirus_Guidance_on.aspx

Opening for Private Prayer and/or Services

Churches in England and Wales are now legally permitted to open for private prayer and/or services provided that the appropriate social distancing and other safety measures are in place. (Both Governments have published guidance in relation to this. For churches in England, the relevant guidance can be found at: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-places-of-worship-during-the-pandemic-from-4-july/covid-19-guidance-for-the-safe-use-of-places-of-worship-from-2-december> . For churches in Wales, the guidance can be found at: <https://gov.wales/guidance-reopening-places-worship-coronavirus-html>).

Please also see our guidance leaflet on church worship which can be found here: https://www.baptist.org.uk/Articles/582206/Coronavirus_Guidance_on.aspx

Before re-opening for private prayer and/or services at an appropriate time and in accordance with the relevant official guidance, churches should consider, as part of their risk assessment, how they would be able to re-open whilst observing social distancing and implementing other COVID-19 mitigation measures. For more information, please see our guidance on reopening church buildings, a link to which can be found at the beginning of this section.

As churches adapt their policies and procedures, the UK Government's guidance for the safe use of places of worship reminds us that security is an important consideration and provides further information about this (please see the link above).

Sales and Purchases of Property

In England, these remain permitted. Please see:

<https://www.gov.uk/guidance/government-advice-on-home-moving-during-the-coronavirus-covid-19-outbreak>

Churches that have already exchanged contracts in relation to a property transaction would normally have to complete them in accordance with the terms of the contract unless alternative arrangements can be negotiated between the parties. Any such arrangements should be formally documented between the parties' solicitors. We are urged by the Government to adapt and be flexible.

Government guidance in England is that, where someone is self-isolating, a move should be delayed until all members of the household have come to the end of their self-isolation period even when contractually committed to move. Where contracts have not yet been exchanged, conveyancers will need to include appropriate clauses in contracts to provide for this. The Government guidance goes into detail about viewings and other aspects of the process.

In Wales, property transactions remain permitted and the official guidance can be found here:

<https://gov.wales/moving-home-during-coronavirus-pandemic#section-44997> .

Construction Projects

In England, construction projects may proceed subject to a satisfactory risk assessment, compliance with the relevant guidelines and social distancing where appropriate.

Government guidance can be found here: <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/construction-and-other-outdoor-work>

In Wales, work that cannot take place from home may proceed with all reasonable measures to maintain social distancing in the workplace. Please see:

<https://gov.wales/taking-all-reasonable-measures-maintain-physical-distancing-workplace>

<https://gov.wales/construction-and-outdoor-work-coronavirus-workplace-guidance1>

Routine Maintenance of Grounds

In England, work and the provision of voluntary and charitable services are permitted where it is not reasonably possible to do such things from home. Churches may, however, wish to consider whether such activities would be appropriate. Individual churches should exercise their own judgment and common sense in relation to this issue whilst taking into account all relevant risks.

In Wales, the general position is that providing voluntary or charitable services or working (where it is not reasonably practicable to do so from home and there is no reasonably practicable alternative) appears to be a reasonable excuse for being away from home. However, churches are invited to consider whether any work undertaken would be appropriate. Individual churches should exercise their own judgment and common sense in relation to this issue whilst taking into account all relevant risks.

Burial Grounds and Church Open Spaces

In England and Wales people are entitled to visit burial grounds to pay respects to a member of their household, a family member or friend provided they observe the general rules to limit the spread of the coronavirus.

Informal Hirings

As Wales is at Alert Level 3, church halls in Wales can now open for organised community activities but this is subject to certain limitations. Where these activities take place indoors, the maximum number of people who can attend at any one time is 15 people. (Where these activities take place outdoors on the church's premises, the maximum number of people who can attend at any one time is 30 people). Children under 11 and organisers of the activity are not included for the purpose of counting the number of persons attending. No alcohol may be consumed in connection with these activities. Furthermore, the premises cannot be used for purposes that would otherwise be currently prohibited by the legislation such as indoor hospitality (including, for example, coffee mornings or lunch clubs) and entertainment uses such as use as a bingo hall or as an indoor visitor attraction. It is our view that it is not currently permissible to hire church halls for private parties.

For general guidance in connection with the use of community facilities for permitted purposes, please see <https://gov.wales/safe-use-multi-purpose-community-centres-covid-19> . Church halls may still be used in connection with the provision of registered childcare, please see <https://gov.wales/alert-level-3-frequently-asked-questions#section-69567>

In England, church halls used for community purposes must now close except in relation to a limited number of exempt activities which include the provision of essential voluntary services such as foodbanks and use by registered childcare settings. Where a church has been letting out the church's premises under casual hiring agreements, for example, for exercise classes or social gatherings, these arrangements will have to stop and the income from such activities will also cease. A church seeking to terminate such arrangements should check the terms of any agreement and offer refunds where appropriate.

For guidance about use of church halls in connection with permitted activities, please see: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities/covid-19-guidance-for-the-safe-use-of-multi-purpose-community-facilities> . In England, the wearing of facemasks is mandatory in community facilities unless an exemption applies (eg, for persons undertaking exercise or an activity where wearing a mask would negatively impact their ability to do so). For further information, please see: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>

For information about the use of face coverings in Wales, please see: <https://gov.wales/face-coverings-guidance-public>

Any decision about hiring church premises for legally permitted activities should be made carefully on a case by case basis and following a risk assessment taking into account all relevant factors. All hirings should be made using an appropriate written agreement with any special COVID-19 related requirements being specifically agreed in writing (e.g. wearing of facemasks, social distancing, general compliance with Government guidance, cleaning and the hirer undertaking an appropriate risk assessment and sharing this with the church for approval).

Landlord and Tenant Issues

Generally a landlord is not permitted to prevent or interrupt its tenant's use and occupation of leased premises. Whether a tenant should be allowed to continue to use the premises will depend on a number of factors such as the overall levels of risk, the type of the property, its location, use, the terms of the lease and any relevant legislation or Government guidance. It is essential that, in such circumstances, the church has early discussions with the tenant, monitors the situation closely and the church may need to take legal advice if considering any formal action.

Rent Concessions in Commercial Leases

These are difficult times for many businesses. Whilst business rates relief and Government financial support packages may help some stay viable, many may struggle to pay their rent. Often Leases do not contain 'force majeure' clauses which are used in other types of contract to cater for events beyond their control that may make performance of the contract impossible. Furthermore, traditional lease rent suspension clauses are unlikely to cater for the Covid-19 pandemic.

The landlord's usual remedy of forfeiting the lease for non-payment of rent or other sums due under the lease is suspended until 30 June 2021. Nevertheless, rent will still accrue during this period and be payable by the tenant (usually with interest) unless there has been some contrary agreement between the landlord and the tenant. In the circumstances, the most pragmatic solution may be to negotiate a realistic plan for payment with the tenant.

The Government has published a voluntary Code of Practice for commercial property relationships during the pandemic which encourages a collaborative approach between landlords and tenants where tenants are struggling to afford their rent and service charges. It can be found here:

<https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector/code-of-practice-for-commercial-property-relationships-during-the-covid-19-pandemic>

A new template has been included as an annexe to the Code of Practice to assist landlords and tenants in their negotiations. This can be found here:

<https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector>

Commercial tenants may seek rent concessions such as rent-free periods, deferred rent, reduced rent or similar arrangements. The church should balance forgoing monies to which they are lawfully entitled against the potential risks to future income of having a tenant that is in financial difficulties and potential reputational damage to the church. When coming to any decisions, church charity trustees should always consider how the best interests of the church charity are served. It is appropriate for the charity trustees to consider the medium and long term situation and the potential for a tenant to become insolvent. In such circumstances, even if the church regains possession of the property, in the current climate there may be very little realistic possibility of the property being re-let. A church may, therefore, prefer to defer rent rather than write it off completely. Any agreements relating to such matters should be properly documented to prevent future disputes and churches may wish to contact legal.ops@baptist.org.uk about this in the first instance.

Some commercial premises let by churches may have been vacated, for example, because the law has required this or they may have been closed for commercial reasons. Other premises may have continued to be used, for example, by a foodbank, a business where it has not been reasonably practicable for all staff to work from home, or a pre-school which has remained open for vulnerable children and the children of key workers.

- *Pre-schools*

In England, childcare settings may continue to operate and the Government's guidance can be found here:

<https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures/coronavirus-covid-19-early-years-and-childcare-closures>

Other relevant guidance relating to pre-schools can be found here:

<https://www.gov.uk/government/publications/coronavirus-covid-19-early-years-and-childcare-closures#history>

<https://www.gov.uk/government/publications/coronavirus-covid-19-financial-support-for-education-early-years-and-childrens-social-care>

<https://www.gov.uk/government/publications/safe-working-in-education-childcare-and-childrens-social-care>

The Early Years Alliance has provided detailed guidance in relation to coronavirus and pre-schools. This can be found here: <https://www.eyalliance.org.uk/coronavirus-info-for-nurseries>. They also have information about business support at: <https://www.eyalliance.org.uk/coronavirus-business-support-nurseries> and more general information: <https://www.eyalliance.org.uk/nurseries-childminders-reopen-coronavirus-lockdown>. The Early Years Alliance also provide further information about other issues such as infection control and funding issues on their website.

For churches in Wales, guidance can be found at:

<https://gov.wales/childcare-coronavirus>

<https://gov.wales/childcare-under-five-year-olds-providers-guidance-coronavirus>

<https://gov.wales/covid-19-workforce-risk-assessment-tool-guidance>

<https://gov.wales/apply-childcare-providers-grant-coronavirus>

For churches that let self-contained premises to a pre-school, management of the return to school will largely be a matter for the pre-school. However, where, for example, a pre-school occupies a church hall with facilities such as toilets that are shared by other users, the church would wish to be sure that COVID-19 is appropriately managed for the benefit of other users of the space or shared facilities. (See the following general considerations below).

- *General Considerations Relevant to Commercial Tenancies*

In England, the Government's message remains that workers should continue to work from home wherever possible. However, where this is not possible for a church's commercial tenants, they will be looking at making their premises 'COVID-19 secure'. Most workplaces will need to take measures to ensure social distancing at work wherever possible. As part of this they may wish to make physical alterations to the property such as partitions or screening. A tenant may also wish to alter the permitted hours of use to accommodate staggered start times. Whether or not such changes are permitted without formal consent would depend on the terms of the lease. Where a church's consent is required it is important that this be appropriately legally documented.

The impact of lockdown easing on a church as a landlord of commercial premises will largely depend on the physical configuration of the premises. Where a tenant's premises are entirely self-contained then, other than perhaps in relation to proposed physical alterations or changes of times of occupation, the COVID-19 security of the premises will be a matter for the tenants for as long as the lease continues.

However, where a church as landlord retains responsibility for common parts such as stairwells, corridors, lobbies, toilets etc, the church would need to make these areas as COVID-19 secure as reasonably practicable for the benefit of all users. Under health and safety legislation a person in control of premises has a duty to other people who may be affected by their conduct to ensure that, so far as reasonably practicable, they are not exposed to risks in respect of premises. A church landlord who has retained responsibility for common parts would be subject to this duty and the duty would apply to the risks posed by COVID-19 in the same way as any other health and safety hazard. Therefore, considering COVID-19 as part of a risk assessment is important.

Appropriate measures may include implementing clear one-way systems in walkways to facilitate social distancing, increased cleaning and deep cleaning of common parts, non-touch doors, more frequent refuse removal, a requirement to wear face coverings and even preventing some areas being used. Many leases contain a provision allowing a landlord to make regulations regarding the use of the premises and common parts upon which a church landlord could rely. Any regulations should be clear, in writing, and communicated to all relevant tenants. Where a church landlord incurs additional costs as a result of these measures, it will depend on the individual leases whether these costs can be recovered from the tenants through the service charge. Churches requiring further advice may wish to email: legal.ops@baptist.org.uk in the first instance. Churches should also be sure to take into account any requirements from the church's insurer in relation to such matters.

The government has issued guidance in relation to cleaning which can be found here:

<https://www.gov.uk/government/publications/covid-19-decontamination-in-non-healthcare-settings/covid-19-decontamination-in-non-healthcare-settings>

Where a building requiring cleaning is a listed building or of historic importance, please see the guidance from Historic England.

<https://historicengland.org.uk/coronavirus/historic-places/cleaning-historic-surfaces/>

Where a lease comes to an end the church should consider COVID-19 as part of its overall risk assessment. This may require, for example, a deep clean to take place after tenants have vacated. As the economy recovers, a church landlord of a vacant commercial unit may find it difficult to attract new tenants for a while.

Residential Leases

It is anticipated that many residential tenants may have difficulties paying their rent. The Government has encouraged landlords to offer support to tenants who may see their income cut or fluctuate. Good communication with your tenants is vital at this time.

As with commercial lettings, there is a balance to be struck between ensuring that the church charity receives all sums legally due to it and wider considerations such as reputational risk and medium term financial considerations of keeping a tenancy agreement in place at a time when finding replacement tenants may be difficult for a while. If a tenant is struggling to pay rent it is likely that some reasonable practical negotiated solution will be the best approach. The church may wish, for example, to agree for arrears to be paid at a later date or make some other rent concession. Churches, however, may not wish to be too quick to write-off rent altogether as Local Authorities may be able to offer support to tenants experiencing financial hardship and tenants whose circumstances may have changed may qualify for state benefits to help them pay their rent. Any rent concessions should be documented and churches may wish to email legal.ops@baptist.org.uk with any queries.

The Government is discouraging landlords from commencing or continuing eviction proceedings at this time unless there is a very good reason for doing so. However, even if a church did wish to terminate an assured shorthold tenancy, notice periods applying to notices seeking possession of residential

property given after 25 March 2020 were increased to three months and they have now been further increased to six months in England (subject to some exceptions). In Wales the notice period is also six months. In England, there is a ban on residential evictions until 31 May 2021 save for in a very limited set of circumstances. In Wales, the restrictions on residential evictions are set to last until 30 June 2021.

A landlord's repairing obligations remain the same and they still must ensure that properties meet the required standard.

In England, the Government guidance is that, no work should be carried out in a household which is isolating because one or more person has symptoms of the coronavirus or where an individual has been asked to shield unless it is to remedy a direct risk to the safety of the household or to the public. All work should be carried out in accordance with guidance that can be found here <https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19/homes> .

It is especially important that the latest guidance on social distancing and working safely in people's homes is followed where work is carried out in the home of someone who has been advised to shield, or is clinically vulnerable to the coronavirus.

As for gas inspections, in England the Government's position is that landlords should take all reasonable steps to carry out annual gas safety checks. However, where someone at the property is self-isolating, the gas safety check can be delayed until after the isolation period has ended. Further detailed guidance is available at <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/landlords/> .

In Wales, the general position is that the Government recommends that no work should be carried out in any household which is self-isolating unless it is to repair a fault which poses a direct risk to people's safety. The guidance recommends that tenants exercise their personal judgment about letting people into their home but reasons for doing so may include: a leaking roof; broken boiler, plumbing issues that mean there is no washing or toilet facilities; a broken fridge or washing machine, security critical issues such as a broken window or external door and broken facilities that are relied upon by a disabled person. For further information, please see <https://gov.wales/repairs-your-rented-home-during-coronavirus-pandemic> , <https://gov.wales/coronavirus-regulations-guidance#section-50264> and <https://gov.wales/coronavirus-covid-19-guidance-for-landlords-and-managing-agents-in-the-private-rented-sector-html> . Information about undertaking gas safety checks can be found at <https://www.gassaferegister.co.uk/help-and-advice/covid-19-advice-and-guidance/> .

Where the Church is a Tenant

Where the rented property is in England, please see the Government's guidance for landlords and tenants which can be found at: <https://www.gov.uk/government/publications/covid-19-and-renting-guidance-for-landlords-tenants-and-local-authorities>

Where the rented property is in Wales, please see the Government's guidance for landlords and tenants which can be found at: <https://gov.wales/renting-home-coronavirus>

A reduction in income may lead to the church having difficulty in paying its rent. The Government has published a voluntary Code of Practice for commercial property relationships during the pandemic. This encourages a collaborative approach between landlords and tenants where tenants are struggling to afford their rent and service charges. It can be found here: <https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector/code-of-practice-for-commercial-property-relationships-during-the-covid-19-pandemic>

In appropriate circumstances a church may need to seek to negotiate and document some concession with its landlord. In the first instance a church may wish to seek guidance from us.

A new template has been included as an annexe to the Code of Practice to assist landlords and tenants in their negotiations. This can be found here:

<https://www.gov.uk/government/publications/code-of-practice-for-the-commercial-property-sector>

Use of Property Trust Monies

Where a church has sold property, the proceeds of sale may be held by a Baptist trust corporation (e.g. the BUC) for the benefit of the church in a trust fund account. Depending on the trusts that govern the use of the fund, it may be possible for a church to draw upon the trust money to support the church. However, many trust funds can only be used for limited purposes, for example, to improve or redevelop church buildings, to purchase new church property or for other capital expenditure. Some trusts are wider in scope and may be used to fund expenditure in connection with the church's charitable purposes. The BUC will not be able to release trust funds for purposes that do not fall within the trusts. If a church thinks it may have a relevant trust fund and wishes to use it please contact us.

Ordinarily, the BUC would wish to see a resolution from a church members' meeting in relation to the use of trust monies. However, in the current circumstances the BUC is taking the view that a church meeting may not be necessary before funds are released. Where a church members' meeting is not possible (see guidance above about church members' meetings), we would ask that the church leadership team meets remotely e.g. by video conferencing, to consider how much is needed to be released from the trust fund and for what purposes that money will be used. All decisions should be carefully minuted. If a church members' meeting is not possible remotely, we recommend that the leadership team contacts all the church members to inform the members of the proposal to use a specified sum from the trust fund for stated purposes and invite them to agree or object within a reasonable time on the understanding that the leadership team will make a decision on behalf of the church with a confirmatory resolution to follow in due course.

Hopefully with a clear decision from the majority of members, the Leadership team can hold another meeting in which it can decide, on behalf of the church, to use the amount required from the trust fund for the proposed purposes. The BUC will proceed on the basis of the leadership team resolution on the understanding that a confirmatory members meeting will follow at some point in the future. You should send the resolution to us with a formal request for release of the money by email to legal.ops@baptist.org.uk.

In order for the BUC to demonstrate compliance with its duties as Holding Trustee, it is preferable to release a number of smaller amounts on different occasions over time than to simply release one large amount all at once. To save having to hold multiple meetings, church leaders may wish to seek authorisation from the membership for the use of the largest sum they think will reasonably be needed for the specific purposes identified and pass a resolution in the leadership team meeting to this effect. They may then wish to apply to the BUC for this sum by a number of instalments over time. We will be happy to discuss individual arrangements with you in greater detail if you wish.

BUGB Financial Assistance Support Scheme

Churches experiencing financial difficulties may be able to take advantage of the BUGB's Financial Assistance Support Scheme. For further information, please see:

https://www.baptist.org.uk/Groups/338915/Coronavirus_financial_support.aspx

Execution of Documents

[Please refer to Appendix 1 for detailed advice from Anthony Collins LLP on executing documents during the current lockdown.](#) (This has been updated by us to reflect recent changes).

Further Guidance

The Charity Commission's 'Coronavirus (COVID-19) guidance for the charity sector' can be found [here](#).

There is also extensive guidance on the Baptists Together website at www.baptist.org.uk/coronavirus

Any queries in relation to this guidance may be addressed to the Legal & Operations Team using legal.ops@baptist.org.uk and we will respond as soon as we are able.

Appendix 1 - Execution of documents

Social distancing and self-isolation brings some challenges as regards signature of documents at this time. Since postal services are still working it is still possible for documents to be signed in hard copy and passed on as necessary. We have set out below some specific guidance as regards signing documents at this time.

How documents are signed will depend on the structure of the church as rules are slightly different for unincorporated association churches and charitable incorporated organisations. In either case we would recommend that the authority to sign documents on behalf of the church is clearly minuted (even if at this time the trustees' meeting needs to take place by "virtual means").

Charitable incorporated organisations

The CIO approved governing document for Baptist Church provides that deeds are validly signed if signed by at least two trustees. When entering into a deed on behalf of the CIO the trustees' signatures do not need to be witnessed.

There are limited circumstances in which trustees would also need to sign a document as individual trustees (rather than on behalf of the CIO). Your legal advisors should let you know these limited circumstances should they arise and any additional formalities required.

Unincorporated associations

For churches which are unincorporated associations any deed will require the signature of at least two trustees whose signatures have been witnessed. Technically all of the trustees would need to sign but the trustees can pass a resolution under section 333 of the Charities Act 2011 which authorises two of their number to execute the deeds/documents on the church's behalf. If the trustees have not already passed a resolution generally providing for two trustees to sign on behalf of all of the trustees we would suggest a resolution is passed in the following form at a trustees' meeting:

"the Trustees agreed pursuant to section 333 of the Charities Act 2011 that any two of their number may sign all appropriate documentation on behalf of the Trustees to effect the decisions of the Trustees for the period of six months from the date of this meeting"

Witnesses

Although it is best practice to have an independent witness, generally there is no requirement in law for the witness to be independent. Therefore, so long as a person is not party to the deed then he/she can sign as witness. Please note that where a deed is to be sent to the Land Registry, it recommends that the witness should not be a close family member, however a witness may be a spouse, civil partner or cohabitee if this cannot be avoided. A witness could also be a signatory's family member or neighbour but we recommend that the witness be at least 18 years old.

Contracts and Electronic signatures

There may be some contracts (i.e. not deeds) for which delegated authority to enter into the arrangement has been/is given to a particular individual or individuals. Any delegated authority to enter into the contract needs to be clearly recorded for the church's records. In some circumstances it may be possible to rely on electronic signatures to execute some documents Even some deeds relating to land may now be electronically executed using what are called 'mercury signatures'. You should seek advice on the appropriateness of this method for the document being executed because there are some situations in which a wet ink signature is still advisable.

Appendix 2 – List of Amendments to this Leaflet made since 10.06.2020

<i>Date</i>	<i>Section</i>	<i>Page</i>
10.06.20	Preparing for the Next Stage of Lockdown Easing	6
10.06.20	Routine Maintenance of Grounds	7
10.06.20	Residential Leases	11
15.06.20	Preparing for the Next Stage of Lockdown Easing	6
22.06.20	Preparing for the Next Stage of Lockdown Easing	6
22.06.20	Burial Grounds and Open Spaces	8
24.06.20	Preparing for the Next Stage of Lockdown Easing (now called 'Easing of Restrictions')	6
01.07.20	Information for CIOs and Companies: new statutory provisions (June 2020)	3-4
01.07.20	Property Issues – recording who Enters Property (inclusive)	5-6
01.07.20	Easing of Restrictions	6
01.07.20	Routine Maintenance of Grounds	8
01.07.20	Informal Hirings	9
01.07.20	Rent Concessions in Commercial Leases	9
01.07.20	Pre-Schools	10
01.07.20	Where the church is the Tenant	13
13.07.20	Church members meetings (to reflect opening of places of worship)	2 – 3
24.07.20	Property Issues	6
24.07.20	General Property Considerations (Amended throughout the section from 'Inspections, Repairs and Maintenance' to 'Burial Grounds and Church Open Spaces' (inclusive)	7-9

24.07.20	Informal Hirings	9
04.08.20	Property Issues	6
27.08.20	General Property Considerations	7
27.08.20	Informal Hirings	9
27.08.20	Landlord and Tenant Issues	10
02.09.20	Residential Leases	12-13
10.09.20	Virtual church meetings and ecclesiology	3
10.09.20	Routine Maintenance of Grounds	9
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22.09.20	The rule of six and church meetings	4
22.09.20	Rent Concessions in Commercial Leases	10
29.09.20	Corporate Insolvency and Governance Act (CIGA) extension to 30 December	5
06.10.20	CIGA extension does not apply to postponed AGMs	5
22.10.20	Amendments relating to UK Government 3-tier alert system and 'Firebreak' national lockdown in Wales. Property Issues General Property Considerations Informal Hirings Landlord and Tenant Issues	6 7 10 11
3.11.20	Amendments to church member and trustee meeting sections to reflect lockdown provisions; church building cannot be used	2-3
4.11.20	Amendments throughout property section to reflect lockdown provisions - from 'Property Issues' to ' <i>General Considerations Relevant to Commercial Tenancies</i> ' – (<i>Formerly General Considerations Relevant to Commercial Tenancies as the Lockdown Eases in England</i>)	5-14
11.11.20	New template clauses available for virtual church member meetings	3
11.11.20	Amendments throughout property section to reflect end of 'Firebreak' lockdown in Wales and revised official guidance	6-13

11.11.20	New template clauses available for virtual charity trustee meetings	4
3.12.20	Amendments throughout property section to reflect changes following implementation of new tiers in England and revised official guidance	6-14
3.12.20	Amendments re church member and charity trustee meetings to reflect end of second lockdown. New template clauses for CIOs.	2 - 4
7.12.20	CIGA extended to 30 March 2021	5
11.12.20	Holding trustee meetings in person/ in church	4
15.12.20	Holding trustee meetings in person/ in church amended to quote new Charity Commission guidance	4
16.12.2020	Use of Church Premises – some content removed to avoid duplication	8
16.12.2020	Rent Concessions in Commercial Leases – amendment of date of expiry of forfeiture moratorium	10
6.1.2021	To reflect BUGB advice on not meeting in person	2
7.1.2021	Amendments throughout property section to the following sections: Property Issues, General Property Considerations, Use of Church Premises, Routine Maintenance of Grounds, Informal Hirings, Residential Leases.	7-14
11.1.2021	To quote Charity Commission advice on charity meetings	5
1.2.2021	Appointing charity trustees	4
4.2.2021	Mandatory Risk Assessments for Churches in Wales	8
25.2.2021	To reflect updated BUGB statement on re-opening church premises	2
25.2.2021	Risk Assessments, Use of Church Premises, Residential Leases	8, 9 and 14
8.3.2021	CIGA provisions for CIOs and Companies to end on 30 March 2021	5
11.3.2021	Inspections, Repairs and Maintenance and Routine Maintenance of Grounds	9-10
18.03.2021	Rent Concessions in Commercial Leases	11
01.04.2021	Inspections, Repair and Maintenance, Routine Maintenance of Grounds, Residential Leases	9-15
21.04.2021	To quote amended Charity Commission advice on postponing or cancelling AGMs	4
21.04.2021	Minor amendments to reflect end of CIGA provisions for CIOs	3 & 6
04.05.2021	Removed references to lockdown	2 & 5
04.05.2021	Imported section on streaming services and data protection from Baptists Together guidance on reopening places of worship	6-7
06.05.2021	Copyright Licences and Streaming	6-7

06.05.21	Property Issues – change at beginning to reflect Wales moving to Alert Level 3	8
06.05.21	Risk Assessments – change of wording to reflect lockdown easing	9
06.05.21	Informal Hirings – change to reflect Wales moving to Alert Level 3	11
06.05.21	Rent Concessions in Commercial Leases – change to reflect new annexe to Code of Practice	12-14
06.05.21	Residential Leases – change to date of eviction moratorium	14-15

Association Trust Company	Contact
Baptist Union Corporation Ltd East Midland Baptist Trust Company Ltd	Baptist Union Corporation Ltd Baptist House PO Box 44 129 Broadway Didcot Oxfordshire OX11 8RT Telephone: 01235 517700
Heart of England Baptist Association	Heart of England Baptist Association BMS Birmingham 24 Weoley Park Road Selly Oak Birmingham B29 6QX Telephone: 0121 472 4986
London Baptist Property Board	London Baptist Association Unit C2 15 Dock Street London E1 8JN Telephone: 020 7692 5592
Yorkshire Baptist Association	17-19 York Place Leeds LS1 2EZ Telephone: 0113 278 4954
West of England Baptist Trust Company Ltd	West of England Baptist Trust Company Ltd Little Stoke Baptist Church Kingsway Little Stoke Bristol BS34 6JW Telephone: 0117 965 8828

This is one of a series of *Guidelines* that are offered as a resource for Baptist ministers and churches. They have been prepared by the Legal and Operations Team and are, of necessity, intended only to give very general advice in relation to the topics covered. These guidelines should not be relied upon as a substitute for obtaining specific and more detailed advice in relation to a particular matter.

The staff in the Legal and Operations Team at Baptist House (or your regional Trust Company) will be very pleased to answer your queries and help in any way possible. It helps us to respond as efficiently as possible to the many churches in trust with us if you write to us and set out your enquiry as simply as possible.

The Legal and Operations Team also support churches that are in trust with the East Midland Baptist Trust Company Limited.

If your holding trustees are one of the other Baptist Trust Corporations you must contact your own Trust Corporation for further advice. A list of contact details is provided above. If you have private trustees they too should be consulted as appropriate.

Contact Address and Registered Office:

Support Services Team, Baptist Union of Great Britain, Baptist House, PO Box 44,
129 Broadway, Didcot OX11 8RT

Tel: 01235 517700 Fax: 01235 517715 Email: legal.ops@baptist.org.uk

Website: www.baptist.org.uk Registered CIO with Charity Number: 1181392

Date of Issue: 6 May 2021